DECISION No. 50/1992 (COTE D'IVOIRE)

(See annex II, Decision No. 50/1992.)

DECISION No. 51/1992 (TUNISIA)

Communication addressed to the Government of Tunisia on 8 April 1992.

Concerning: Hamadi Jebali and Mohammed al-Nouri on the one hand and Tunisia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases transmitted to it, within ninety (90) days from the transmittal of the letter by the Working Group.

3. (Same as in Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Tunisian Government. The Working Group transmitted the reply of the Tunisian Government to the source of the information, which to date has not responded. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, taking into account the allegations made and the Government's reply.

5. It is alleged in the communication from the source that Hamadi Jebali, a journalist and director/editor of Al-Fajr, the weekly magazine of an-Nadha (Islamic Renaissance Party), an unauthorized party, and Mohammed al-Nouri, a lawyer, were detained on 17 January 1991, just after being sentenced by the military court in Tunis to prison terms of one year and six months respectively, for defamation of a judicial institution. In an article published in Al-Fajr on 27 October 1990, Mohammed al-Nouri stated that military courts are unconstitutional in a democratic society and called for their abolition. He also cast doubt on the independence and qualifications of the judges presiding over those courts. According to the source, Hamadi Jebali and Mohammed al-Nouri were not permitted to appeal against the military court's decision. Both are alleged to be still in prison, despite the fact that they have completed their sentences.

6. In its reply, the Tunisian Government confirms the fact that the reason for the detention of Hamadi Jebali (which it says began on 31 January 1991 or 2 February 1991, and which the source says began on 17 January 1991) and of Mohammed al-Nouri (which it says began on 6 March 1991, and which the source says began on 17 January 1991) was the above-mentioned article reported by the source, published under the byline of Mohammed al-Nouri in the magazine Al-Fajr, of which Hamadi Jebali is director and editor. The Tunisian Government

also admits that Hamadi Jebali is still being detained although he has completed his one-year prison term. But it explains the situation by the fact that, while Hamadi Jebali was in detention, the examining magistrate for the military court in Tunis investigated a plot against internal State security attributed to the Ennahda movement, and established that the person in question, who allegedly remained a member of the Executive Bureau of the above-mentioned secret movement, was also implicated. Thus another detention warrant was issued against him. The case is following its course. The Tunisian Government also acknowledges that Mohammed al-Nouri was kept in detention on the expiry of his sentence for the same reasons, but says he was released on bail on 18 March 1992 at the decision of the examining magistrate for the military court. In addition, in a commentary sent together with the Tunisian Government's reply, entitled "Guarantees for persons tried by military courts in Tunisia", it is mentioned that the military court is competent to judge offences by military personnel covered in article 8 of the Code of Military Justice, on the one hand, and cases where civilians are implicated in the same trial as military personnel, on the other, because of the principle of unity of jurisdiction; in these circumstances it might be wondered whether the military court is competent to try two civilians, Hamadi Jebali and Mohammed al-Nouri, for a violation of the press laws. Furthermore, from the excerpts of the Code of Military Justice attached to the Government's reply, it appears that there is no appeal against judgements handed down by the military courts. Only application for judicial review is possible, even if it has the effect of suspending the execution of the conviction.

7. Thus, the foregoing clearly indicates that Hamadi Jebali and Mohammed al-Nouri were convicted by the military court and detained for freely and peacefully exercising, through the publication in the magazine Al-Fajr of the article in question, their right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

8. In the light of the above, the Working Group decides:

(a) The detention of Hamadi Jebali is declared to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The Working Group notes with satisfaction the release on bail of Mohammed al-Nouri. Nevertheless, in accordance with its methods of work, the Group decides that Mr. al-Nouri's detention, following a six-month prison sentence, was also arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

READEX

9. Consequent upon its decision declaring the detention of Hamadi Jebali to be arbitrary, the Working Group requests the Tunisian Government to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

DECISION No. 54/1992 (UNITED REPUBLIC OF TANZANIA)

(See annex II, Decision No. 54/1992.)

Annex II

DECISION ON CASES OF REPORTEDLY RELEASED DETAINEES AND LIST OF SUCH PERSONS

In the course of its consideration of some of the cases of alleged arbitrary detention which it transmitted to Governments, the Working Group was informed, either by the Government concerned or by the source of the allegation, and in some cases by both, that the person(s) concerned is (are) no longer in detention.

Paragraph 14 (a) of its methods of work states that the Working Group, in the light of the information examined during its investigation, shall take one of the following decisions:

"(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned".

The following list contains the cases of persons who are reportedly no longer in detention and regarding whom the Working Group, after having examined the available information, is of the opinion that no special circumstances warrant the Group to consider the nature of their detention. The Working Group, without prejudging the nature of the detention, therefore decides to file their cases, in the terms of paragraph 14 (a) of its methods of work.

(The names of the persons listed below are preceded by the number of the decision regarding them, by order of its adoption by the Working Group, and the country concerned. The signs (X), (Y) and (Z) following each name indicate whether the information of that person's release was provided by the Government (X), the source (Y), or both (Z).)

Decision No. 6/1992 (SYRIAN ARAB REPUBLIC): Bayan Sulaiman Allaf (Z), Laila Sulaiman al-Ali (Z), Wafa Sulaiman al-Ali (Z), Khadija Hussein al-Ali (Z), Lina Muhammad Ashur (Z), Nuha Ahmad Ismail (Z), Hala Muhammad Fattum (Z), Ramla Ali Abu Ismail (Z), Huda Mustafa Kakhi (Z), Malak Sulaiman Khaluf (Z), Julia Matanius Mikhail (Z), Barzan Nuri Shaikhmous (Z), Wafa Muhammad Tarawiyya (Z), Salwa Muhieddin Wannus (Z), Mariam Abdul Rahman Zakariyya (Z), May Abdul Qadir al-Hafez (Z), Raghida Hassan Mir Hassan (Z), Samira Ibrahim Abbas (Z), Muna Muhammad al-Ahmad (Z), Nadiya Muhammad Badawiyya (Z), Salafa Ali Barudi (Z), Fatima Muhammad Khalil (Z), Munira Abbas Huwaija (Z), Sahar Abbas Huwaija (Z), Than Abdo Huwaija (Z), Wafa Hashim Idris (Z), Najiya Muhammad Shihab Jir'atli (Z), Gharnata Khalid al-Jundi (Z), Asmahan Yaseen Majarisa (Z), Rana Ilyas Mahfudh (Z), Sawsan Faris al-Ma'az (Z), Hiyam Hassan al-Mi'mar (Z), Lina Rif'at Mir Hassan (Z), Wafa Said Nassif (Z), Wijdan Sharif Nassif (Z), Hiyam Sulaiman Nuh (Z), Afaf Walim Qandalaft (Z), Asia Abdul Hadi al-Saleh (Z), Munira Kamil al-Sarem (Z), Fadia Fuad Shalish (Z), Sahar Hassan Shamma (Z), Umayma Daoud Shamsin (Z), Sahar Wajih al-Bruni (Z), Rimah Ismail al-Bubu (Z),

Intisar al-Akhras (Z), Abir Barazi (Z), Rabi'a Barazi (Z), Rajia Dayub (Z), Lina Ismail (Z), Abir Ismandar (Z), Yasmin Istanbuli (Z), Intisar Mayya (Z), Valentina Qandalaft (Z), Tawfiqa Rahil (Z), Malaka Rumia (Z), Sana Sa'ud (Z), Aida Wannus (Z), Wafa Murtada (Z). (See also Chapter II, decision No. 6/1992.)

Decision No. 10/1992 (CUBA): Juan Enrique García Cruz (X). (See also annex I, Decision No. 10/1992.)

Decision No. 12/1992 (CUBA): Miguel Angel Barroso (X).

Decision No. 13/1992 (CUBA): Tomás Azpillaga (X), Basilio Alexis Flores (X), Rigoberto Martínez Castillo (X). (See also annex I, Decision No. 13/1992.)

Decision No. 20/1992 (CUBA): Roberto Ríos Alducin (X).

Decision No. 22/1992 (CUBA): Tania Díaz Castro (X).

Decision No. 23/1992 (CUBA): Juan Betancur Morejón (X).

Decision No. 24/1992 (CUBA): Moisés Ariel Vialart del Valle (X), Guillermo Zenón Santos Davilla (X), María Margarita Gardía Valdés (X). (See also annex I, Decision No. 24/1992.)

Decision No. 25/1992 (CUBA): Félix Alexis Morejón Rodríguez (X).

Decision No. 26/1992 (CUBA): Miriam Aguilera (X), Ernesto Díaz Nodarse (X), Leonela o Leonelma Madiedo (X), Nérida Pérez Fuentes (X), Abelardo Ferreiro Alvarez (X), Juan Ramón Llorens (X). (See also annex I, Decision No. 26/1992.)

Decision No. 27/1992 (CUBA): Ricardo Figueiras Castro (X).

Decision No. 28/1992 (CUBA): Mayra González Linares (X), Adolfo González Cruz (X). (See also annex I, Decision No. 28/1992.)

Decision No. 29/1992 (CUBA): Carlos Ortega (X). (See also annex I, Decision No. 29/1992.)

Decision No. 30/1992 (CUBA): Ernesto Bonilla Fonseca (X).

Decision No. 31/1992 (CUBA): Julio Soto Angurel (X).

Decision No. 32/1992 (CUBA): Mabel López Gonzáles (X), Fidel Díaz Pacheco (X), Alberto Bárbaro Villavicencio (X), Narciso Ramírez Lorenzo (X), Alberto Falcon Moncada (X), Mercedes Peito Paredes (X), Marcela Rodríguez Rodríguez (X), Paulino Aguila Pérez (X), Guillermo Montes (X) (y Ramón López Peña*). (See also annex I, Decision No. 29/1992.)

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* The case of "Ramón López Peña" is filed due to the non-existence of that person.

Decision No. 34/1992 (MEXICO): Joel Padrón González (X).

Decision No. 35/1992 (UGANDA): Daniel Omara Atubo (Z).

Decision No. 37/1992 (SUDAN): Albino Akol Akol (X), Mirghani Babiker (X), Awad Salatin Darfur (X), Omar Ali Serabal (X), Mohamed Sayegh Hassan Yousif (X), Gordan Micah Kur (X), Professor Moses Macar (X), Professor Richard Hassan Kalam Sakit (X). (See also annex I, Decision No. 37/1992.)

Decision No. 41/1992 (CHILE): Miriam Ortega Araya (X), Cecilia Radrigán Plaza (X), Valentina Alvarez Pérez (X).

Decision No. 50/1992 (COTE D'IVOIRE): Degny Segui (Y).

Decision No. 54/1992 (UNITED REPUBLIC OF TANZANIA): Seif Sharif Hamad (Y).

Annex III

STATISTICS

(Covering the period from the beginning of the Working Group's activity in September 1991 to the finalization of the present report in December 1992)

I. CASES OF DETENTION IN WHICH THE WORKING GROUP ADOPTED A DECISION REGARDING THEIR ARBITRARY OR NOT ARBITRARY CHARACTER

A. Cases of detention declared arbitrary.

1. Cases of detention declared arbitrary falling within category I (including 2 cases of persons who died in detention and 3 who were released) . .	27
2. Cases of detention declared arbitrary falling within category II (including 2 cases of persons who were released)	32
3. Cases of detention declared arbitrary falling within category III (including 2 cases of persons who were released)	19
4. Cases of detention declared arbitrary falling within categories I and II	1
5. Cases of detention declared arbitrary falling within categories II and III (including 2 cases of persons who were released)	14
Total of cases of detention declared arbitrary	93
B. Cases of detention declared not arbitrary	1
Total.	94

II. CASES WHICH THE WORKING GROUP DECIDED TO FILE

A. Cases filed due to the person's release, in which the Working Group deemed there were no special circumstances requiring it to consider the character of the detention (see annex II)	107
B. Cases filed due to lack of sufficient information . .	18
C. Other reasons (e.g. non-existence of the person whose detention was alleged	1
Total	126

III. CASES PENDING

A.	Cases which the Working Group decided to keep pending and request further information	3
B.	Cases transmitted to Governments in which the Working Group has not yet taken any decision . . .	159
Total	. . . . .	162
Total of cases dealt with by the Working Group during the period September 1991 to December 1992	. . . . .	382

Annex IV

REVISED METHODS OF WORK

1. The methods of work are largely based on those applied, in the light of 11 years' experience, by the Working Group on Enforced or Involuntary Disappearances, with due regard for the specific features of the Group's terms of reference under Commission on Human Rights resolution 1991/42, whereby it has the duty of informing the Commission by means of a comprehensive report (para. 5), but also of "investigating cases" (para. 2).

2. The Group takes the view that such investigation should be of an adversarial nature so as to assist it in obtaining the cooperation of the State concerned by the case considered.

3. In the opinion of the Working Group, situations of arbitrary detention, in the sense of paragraph 2 of resolution 1991/42, are those described in accordance with the principles set out in annex I of document E/CN.4/1992/20.

4. In the light of resolution 1991/42, the Working Group shall deem admissible communications received from the concerned individuals themselves or their families. Such communications may also be transmitted to the Working Group by representatives of the above-mentioned individuals as well as by Governments and intergovernmental and non-governmental organizations.

5. The communications must be submitted in writing and addressed to the secretariat giving the family name, first name and address of the sender, and (optionally) his telephone, telex and telefax numbers.

6. As far as possible, each case shall form the subject of a specific presentation indicating family name, first name and any other information making it possible to identify the person detained and all elements clarifying the legal status of the person concerned, particularly:

(a) The date, place and the forces presumed to have carried out the arrest or detention together with all other information shedding light on the circumstances in which the person was arrested or detained;

(b) The reasons given by the authorities for the arrest or detention or the offences;

(c) The relevant legislation applied to the case in point;

(d) The internal steps taken, including domestic remedies, especially approaches to the administrative and legal authorities, particularly for verification of the detention and, as appropriate, their results or the reasons why such steps were ineffective or were not taken; and

(e) A short account of the reasons why the deprivation of liberty is regarded as arbitrary.

7. In order to facilitate the Group's work, it is hoped that communications will be submitted taking into account the model questionnaire.

8. Failure to comply with all formalities set forth in paragraphs 6 and 7 shall not directly or indirectly result in the inadmissibility of the communication.

9. The cases notified shall be brought to the attention of the Government concerned by the Chairman of the Group or, if he is not available, by the Vice-Chairman, by means of a letter transmitted through the Permanent Representative to the United Nations asking the Government to reply after having carried out the appropriate inquiries so as to provide the Group with the fullest possible information.

10. The communication shall be transmitted with an indication of the deadline established for receipt of a reply. The deadline may not exceed 90 days. If the reply has not been received by the time the deadline is reached, the Working Group may, on the basis of all data compiled, take a decision.

11. The procedure known as "urgent action" may be resorted to:

(a) In cases in which there are sufficiently reliable allegations that a person is being detained arbitrarily and that the continuation of the detention constitutes a serious danger to that person's health or even life. In such cases, between the sessions of the Working Group, the Working Group authorizes its Chairman or, in his absence, the Vice-Chairman, to transmit the communication by the most rapid means to the Minister for Foreign Affairs of the country concerned, stating that this urgent action in no way prejudges the Working Group's final assessment of whether the detention is arbitrary or not;

(b) In other cases, where the detention may not constitute a danger to a person's health or life, but where the particular circumstances of the situation warrant urgent action. In such cases, between the sessions of the Working Group, the Chairman or the Vice-Chairman, in consultation with two other members of the Working Group, may also decide to transmit the communication by the most rapid means to the Minister for Foreign Affairs of the country concerned.

However, during sessions, it devolves on the Working Group to take a decision whether to resort to the urgent action procedure.

12. Between the sessions of the Working Group, the Chairman may, either personally or by delegating any of the members of the Group, request an interview with the Permanent Representative to the United Nations of the country in question in order to facilitate mutual cooperation.

13. Any information supplied by the Government concerned on specific cases shall be transmitted to the sources from which the communications were received, with a request for comments on the subject or additional information.

14. In the light of the information examined during its investigation, the Working Group shall take one of the following decisions:

(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Working Group determines that it is established that the case is not one of arbitrary detention, the case is also filed;

(c) If the Working Group decides that it does not have enough information to take a decision, the case remains pending for further information;

(d) If the Working Group decides that it does not have enough information to keep the case pending, the case may be filed without further action;

(e) If the Working Group decides that the arbitrary nature of the detention is established, it shall make recommendations to the Government concerned. The recommendations shall also be brought to the attention of the Commission on Human Rights in the annual report of the Working Group to the Commission.

15. When the case under consideration concerns a country of which one of the members of the Working Group is a national, that member shall not, in principle, participate in the discussion because of the possibility of a conflict of interest.

16. The Working Group will not deal with situations of international armed conflict in so far as they are covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, particularly when the International Committee of the Red Cross (ICRC) has competence.